

FILED

MAY 19 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Michael David Gutierrez
V-68887; Facility A-4-141-L.
Pleasant Valley State Prison
P.O. Box 8501
Coalinga, California, 93210

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

MICHAEL DAVID GUTIERREZ.,) Case No. C-07-3668 RMW (PR)
Petitioner,)
vs.)
JAMES A. YATES, WARDEN,) NOTICE EX PARTE MOTION OF
DEPARTMENT OF CORRECTIONS) DECLARATION OF MICHAEL DAVID
PLEASANT VALLEY STATE PRISON) GUTIERREZ, IN SUPPORT OF
COALINGA, CALIFORNIA,) REQUEST FOR A COURT ORDER FOR
Respondent.) AN ENLARGEMENT OF TIME TO
) FILE PETITIONER'S TRAVERSE
) (Civil L.R.6-1,3 & Civil L.R.7-10

APPLICATION FOR AN ADDITIONAL 90-DAY ENLARGEMENT OF TIME
TO FILE PETITIONER'S TRAVERSE

TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO THE HONORABLE PRESIDING
JUSTICE DISTRICT JUDGE RONALD M. WHYTE OF THIS COURT AND OR ASSOCIATE
JUSTICES OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA AND TO ALL THE ATTORNEYS IN PARTIES INTEREST:

NOTICE IS HEREBY GIVEN to this above-entitled Court and to all
Attorneys in parties interest that I the Petitioner, Michael David Gutierrez,
hereby moves this Court for an order requesting for an additional 90-days
enlargement of time to file Petitioner's Traverse for the following reasons:

1. April 14, 2008, the Respondent has filed his 13 page complicated
Memorandum of Points and Authorities, Citing 23 Case Authorities in support
of his Answer and Return Brief to Petitioner's instant Petition for Writ of
Habeas Corpus in which it will take petitioner's fellow prisoner legal
assistant this additional 90 days amount of time requested to read and try

1 to comprehend the respondent's entire 13 page answer and return brief and
2 to try to shepherdise petitioner's rebuttal case authorities to the
3 respondent's 13 case authorities, and to try to prepare and file a
4 Ex Parte Motion of a Renewal Application for Reconsideration of appointed
5 Counsel to petitioner's case persuade to (Civil L.R. 44 7-9 & 10 (B)),
6 since petitioner is a layman at federal law and lacks the experience to
7 prepare a proper Traverse with Memorandum of Points and Authorities in
8 rebutting the respondent's complex and confusing issues, arguments, as well
9 as his Standard of Review argument under the Antiterrorism and Effective
10 Death Penalty Act and to allow either a skillful appellate attorney or
11 petitioner's fellow prisoner legal assistant this amount of time to prepare
12 and file a proper Traverse with this Court in a competent and adequate
13 fashion so that petitioner's Traverse will be on file on or
14 before August 14, 2008.

15 2. Another reason for this amount of time requested is because
16 petitioner and his fellow legal assistant is limited time to the actual
17 law library and limited access to up to date case authorities, which
18 needs to be requested of particular case authorities, which takes two or
19 three weeks to obtain a particular case authorities need to complete
20 attorney work in petitioner's case.

21 3. Accordingly, This Court's Order on February 12, 2008, required
22 the respondent's answer and return brief to the Petition with petitioner's
23 option to file his Traverse 30 days thereafter which petitioner's
24 Traverse due date is on or about May 14, 2008.

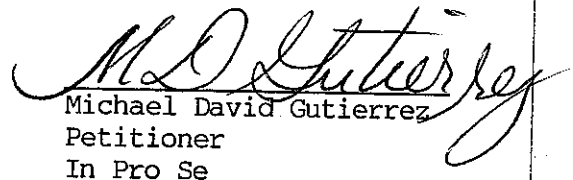
25 4. Petitioner has attempted to read and understand the respondent's
26 reply answer and return brief issues, arguments of Standard of Review under
27 the Antiterrorism and Effective Death Penalty Act in which is confusing
28 to the petitioner since he is a layman at state and federal laws and

1 does not know how prepare a proper traverse to be filed with this Court.

2 CONCLUSION

3 For all the hereinabove mention reasons, petitioner's declaration,
4 and the factual arguments addressed to this Court all constitutes the
5 granting of petitioner's first request for an Court order for an
6 additional 90 days enlargement of time to file petitioner's Traverse
7 on or before August 14, 2008.

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21 Respectfully submitted,

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24 Michael David Gutierrez
25 Petitioner
26 In Pro Se
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ORDER

Good cause appearing, It is hereby ordered granting
Petitioner's motion for an additional 90 days enlargement of time
to file his Traverse with this Court on or before August 14, 2008.

Dated:

2008.

District Judge Ronald M. Whyte
United States District Court

PROOF OF SERVICE BY A STATE PRISONER

FILED

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I, Michael David Gutierrez, declare:

That I am over 18 years of age, and a party/not a party to the cause of action, that I reside at Pleasant Valley State Prison, California. My mailing address is: V-68887; Facility A-4-141-L.; Pleasant Valley State Prison, P.O. Box 8501, Coalinga, California, 93210.

On May 13, 2008, I handed to prison officials for mailing, at the above address, on the exact date, the attached: APPLICATION FOR AN ADDITIONAL 90 DAY

ENLARGEMENT OF TIME TO FILE PETITIONER'S TRAVERSE

In a sealed envelope[s] with postage paid fully paid, addressed to the locations:
(A) Allen R. Crown Deputy Attorney General, 455 Golden Gate Avenue, Suite 11000, San Francisco, CA, 94102-7004.

(B) UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION, 280 South First Street #2112, San Jose, CA, 95113-3008

(C) _____

(D) _____

I declare under penalty of perjury that the foregoing is true and correct. Executed this (13) day of (May), 2008 at Coalinga, California.

Michael David Gutierrez

DECLARANT PRINTED
NAME

Michael David Gutierrez
DECLARANT SIGNATURE

UNITED STATES DISTRICT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION
280 S. FIRST ST. #2
SAN JOSE CA. 95113

P.O. Box 8501
COALINGA CA. 93210